IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.735 OF 2005

IN

SUIT NO.4305 OF 2001

...

Shri Idris M. Haveliwala ...Plaintiff

v/s.

Shri Kamla Prasad Gupta ...Defendant

...

Mr.E.R. Naik for the Plaintiff.

Mr.S.B.Sharma i/b S.S. Mishra for the Defendant.

CORAM: D.K.DESHMUKH, J.

DATED: 6TH JUNE, 2006

P.C.:

1. The suit of the Plaintiff is for recovery of the amount which was given by the Plaintiff to the Defendant. The Plaintiff relied on the Memorandum of Understanding dated 5th August, 1997. The Defendant has acknowledged that he has received the amount of Rs.1,42,000/- from the Plaintiff. The Defendant is not denying his signature on the Memorandum of Understanding.

2. The defence put up by the Defendant is that the Plaintiff is an employee of a bank by name Bombay Mercantile Co.operative Bank Ltd. The Defendant wanted to avail of loan from that Bank. Therefore, his friend introduced him to the Plaintiff who was the employee of the Bank in the month of February/March, 1997 and the Plaintiff assured him that the bank could advance loan to him. In the month of August, 1997, according to the Defendant, he handed over to the Plaintiff seven blank stamp-papers and cheques duly signed by him. According to the

Defendant the Plaintiff is misusing those stamp-papers and blank cheques. The Defendant, however, does not explain as to what was the assurance given by the Plaintiff regarding the loan to be advanced by the Bank. The Defendant does not explain when he had allegedly signed seven blank stamp-papers and handed them over to the Plaintiff in the month of August, 1997. What was the Defendant doing till 5th November, 1998 when he issued the notice to the Plaintiff.

3. The defence that has been put up by the Defendant is incapable of being accepted because it is not behaviour of any ordinary prudent man. The only explanation that is given by the Defendant is that he is illiterate person. According to the Defendant himself he is carrying on business in Mumbai. It is hard to believe that even an illiterate person who is carrying on business in Mumbai will hand over to a person, who is practically stranger to him, seven blank stamp-papers duly signed by him for securing a loan from the Bank without making any inquiry whether for securing the loan from the Bank, stamp-papers are necessary to be executed. Not making any inquiries with anybody, even with the Plaintiff for more than a

year as to what has happened to his application for a loan and the blank stamp-papers that were delivered to him, the defence put up by the Defendant being utterly unbelievable. There is no question of the Defendant getting any leave to defend on the basis of such defence. The Defendant is, therefore, not entitled to leave to defend. The summons for judgment is, therefore, granted and the suit is decreed in terms of prayer clause (a).

Refund of court fees as per rules.

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